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No. 86-1082

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Petitioner,

v.

LARRY WOLLERSHEIM,
Respondent.

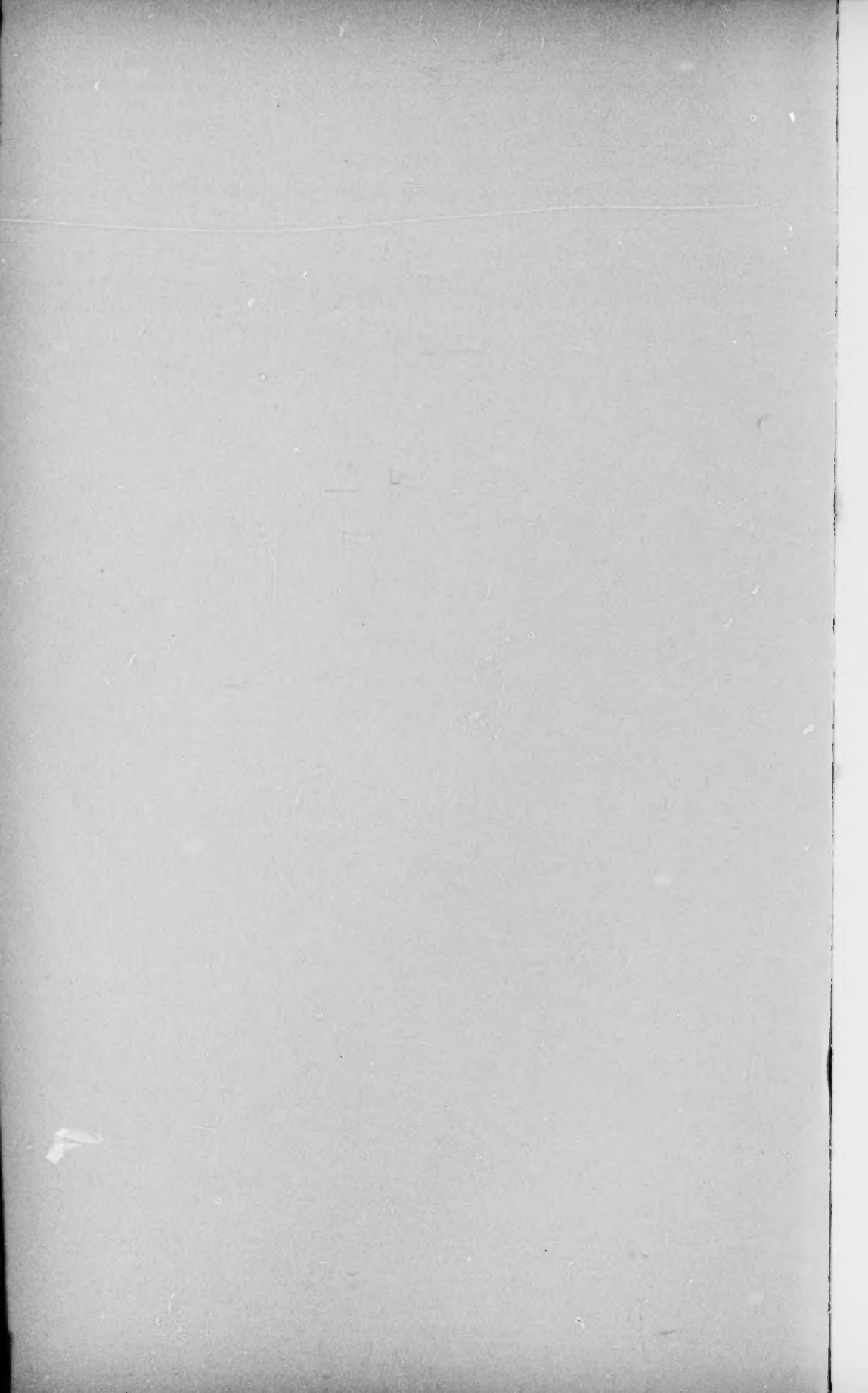
Petition For A Writ Of Certiorari
To The Court Of Appeal Of The State Of California,
Second Appellate District

**MOTION FOR LEAVE TO FILE AND BRIEF
AMICUS CURIAE OF THE NATIONAL COUNCIL
OF CHURCHES OF CHRIST IN THE U.S.A. IN
SUPPORT OF THE PETITION FOR A WRIT OF
CERTIORARI**

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**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

The National Council of Churches of Christ in the U.S.A. hereby respectfully moves this Court for leave to file the attached brief as *amicus curiae* in support of the Petition for Writ of Certiorari pursuant to Rule 36.1 of this Court's rules. The Brief Amicus Curiae is being conditionally filed with this Motion, copies of which have been served upon all parties. The written consent of the petitioners is on file with the Clerk. Respondents have refused their consent.

The National Council of Churches feels that the issues presented in the Petition for Writ of Certiorari, as well as the issues presented in the appeal on the merits before the California Court of Appeal, are of vital interest to its constituents. Some of the denominations represented by the National Council of Churches are congregational in nature. The individual congregations of these denominations would be hard pressed to meet a bond requirement that was even a small fraction of that involved in this case.

The National Council of Churches does not feel that the Petition for Writ of Certiorari gives sufficient emphasis to the due process issues raised in this case by the punitive damages and the proportion of the bond requirement that they represent. Amicus believes that punitive damages assessed against religious bodies impose an unconstitutional burden on First Amendment free exercise rights.

The National Council of Churches also believes that the Petition for Writ of Certiorari does not apprise the Court of the full extent of the problem posed by excessive punitive damages awarded against religious bodies. The National Council desires to bring to the Court's attention a sampling of verdicts representing a recent trend toward attacking religious groups through the use of civil courts and particularly punitive damage awards.

Respectfully submitted,

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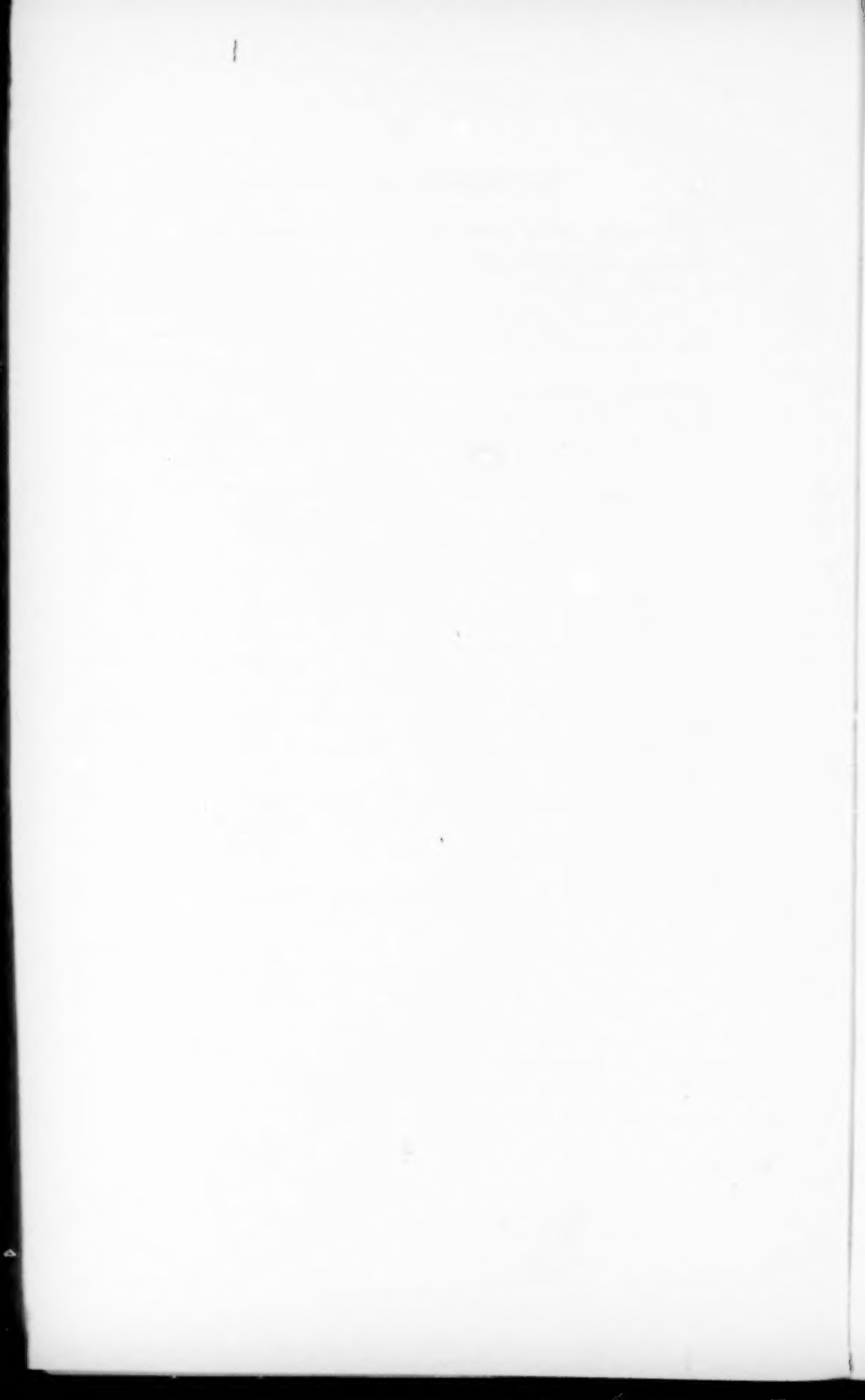
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**BRIEF AMICUS CURIAE OF THE NATIONAL
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INTEREST OF THE AMICUS CURIAE

The National Council of Churches of Christ in the U.S.A. is the cooperative agency of 32 national Protestant and Eastern Orthodox religious bodies in the United States, having an aggregate membership of over 40 million. This brief does not purport to represent the views of all of those persons, but is based on policy determined by their representatives sitting as the Governing Board of the National Council of Churches, a deliberative body of

about 250 persons chosen by the member denominations in proportion to their size and support of the Council. The policy which underlies this action was expressed by the Board in 1955: "The National Council of Churches defends the rights and liberties of cultural, racial and religious minorities." Policy Statement: Religious and Civil Liberties in the U.S.A.

The National Council of Churches believes that novel theories of tort liability based upon religious practices and beliefs pose a serious threat to the religious freedom of its member churches. It further believes that it is imperative that churches have ready recourse to the appellate courts in order to protect their First Amendment rights.

SUMMARY OF ARGUMENT

This case presents a critical issue of due process on which this Court has not spoken and on which lower courts need guidance. Although the Court heard arguments earlier this term on very similar issues in *Texaco, Inc. v. Pennzoil Co.*, *prob. juris. noted*, ___ U.S. ___, 106 S.Ct. 3270 (1986) (No. 85-1798), this case does not contain the abstention and comity questions present in that case. It does contain factors not present in *Texaco* which make review by this Court of great importance to constitutional jurisprudence.

Execution of the judgment in this case threatens the destruction of a religious organization, and the total suppression of protected First Amendment activities. The merits of the appeal below raise substantial First Amendment questions concerning the liability of religious groups for damages alleged to result from the content of their teachings. It is imperative that petitioner have a chance to present these issues to the appellate courts of California, and possibly this Court, before it is driven out of existence

by execution of the judgment. Rigid application of the bonding requirement in this case infringes First Amendment rights in addition to due process rights.

Also, more than 80% of the judgment below represents punitive damages assessed against an unpopular religious group. Imposition of these damages in itself raises due process concerns. Procedural guarantees present in criminal cases are not available to defendants faced with punitive damage awards. The vague standards by which juries decide whether or not to impose punitive damages and what amount to award will cause churches to temper their religious zeal or evangelize at the risk of financial ruin.

Allowing a bonding requirement to prevent review of the damages compounds the constitutional infringement. Since punitive damages do not compensate the injured, but are instead a windfall, the state interest protected by the bond requirement is less than compelling with respect to the punitive portion of the verdict.

Further, the judgment in this case represents a recent trend toward excessive jury verdicts for punitive damages assessed against religious groups. This trend increases the urgency for this Court's pronouncement in this case lest juries be allowed to destroy unorthodox religions, or even orthodox but small religious bodies, without check by higher courts.

Finally, the punitive damages awarded harm not the alleged wrongdoers, but innocent members of the religious group saddled with the judgment. This in itself is unconstitutional. A constitutional challenge to the award of punitive damages in this case should not be precluded by a bond requirement made prohibitive by the very size of the verdict being challenged.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS CRITICAL ISSUES OF DUE PROCESS NOT RULED ON BY THIS COURT AND NOT PRESENT IN THE *TEXACO* v. *PENNZOIL* CASE.

A. Execution Of The Judgment Will Suppress Protected First Amendment Activities.

Amicus believes the failure of the California courts to waive or substantially modify the bond requirements of Cal. Code of Civil Procedure § 917.1 without comment or opinion violates the due process and First Amendment rights of free exercise of the petitioner. This Court has recognized that the Fourteenth Amendment right to due process guarantees that a state, once it has created a right of appeal, must not arbitrarily deny a litigant "a fair opportunity to obtain an adjudication on the merits of his appeal." *Evitts v. Lucey*, 369 U.S. 387, 405 (1985); *see, Griffin v. Illinois*, 351 U.S. 12 (1956). In *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133 (2nd Cir. 1986), *prob. juris. noted*, ___ U.S. ___, 106 S.Ct. 3270 (1986), the Second Circuit held that a litigant's right to appeal would be rendered meaningless if, by enforcement of a state bonding requirement that was impossible for the party to meet, that party was unable to stay execution of a judgment pending appeal that would financially destroy it.

By noting probable jurisdiction and hearing oral arguments in the *Texaco* case, this Court acknowledged the importance of the due process issue raised in that case—and in this one. Several aspects of this case present more compelling reasons for review by this Court than were present in the *Texaco* case. One such aspect is the fact that the amount of the bond required here is from 1 1/2 to 2 times the amount of the judgment compared to a bond equalling the amount of the judgment in *Texaco*. While it is not unique to California to require a bond in excess of

the judgment, inflexible application in a case involving the astronomical damages here, particularly in relation to the assets of the petitioner, aggravates the due process violation.

But the truly compelling reason for a review by this Court of the issues presented lies in the nature of the interest that will be harmed if the bonding requirement is enforced. Unlike *Texaco*, a purely commercial enterprise, the petitioner is a religious institution. Execution of the judgment in this case will make it impossible for it to carry out its religious function.¹ To allow a church to be financially wiped out by execution of a judgment before it has an opportunity to appeal that judgment raises serious First Amendment concerns in addition to the due process implications. This is particularly true where, as here, the appeal on the merits involves substantial constitutional claims with a strong likelihood of success.²

Similar considerations led the Fifth Circuit to affirm an injunction staying execution of a \$1.25 million judgment

¹ Even if petitioner's assets are substantially greater than it asserts, as contended by respondent in his Opposition To Petitioner's Application For Stay Of Execution Of State Court Judgment, posting of the bond would still have a crippling effect on petitioner's operations. *Texaco's* assets were more than three times the amount of its bond requirement, and its net worth was twice the amount of the bond.

² The California Court of Appeal has twice been confronted with the theory of Dr. Margaret Singer that was crucial to the respondent's case on the merits below—*Katz v. Superior Court*, 141 Cal.Rptr. 234 (1977) and *Molko v. Holy Spirit Association*, 224 Cal.Rptr. 817, review granted, 228 Cal.Rptr. 159 (1986). The claims in *Molko* were substantially identical to those of the respondent here. In both cases, the California Court of Appeal found Dr. Singer's theory incompatible with the First Amendment.

against the NAACP without the filing of the required 125% supersedeas bond in *Henry v. First National Bank of Clarksdale*, 595 F.2d 291 (5th Cir. 1979). In *Henry*, the NAACP had a judgment entered against it because of a boycott it led protesting racial discrimination. The court found the fact that enforcement of the judgment or posting of the bond would bankrupt the NAACP and eliminate its voice from the debate on public issues to be a crucial factor in affirming the injunction.

This Court has always been sensitive to the need for special protection of unpopular groups from suppression by the majority. *NAACP v. Button*, 371 U.S. 415 (1963); *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982). In *Brown*, the Court held that exceptions to statutory requirements valid as a general rule can be required by the Constitution when they affect unpopular groups in the exercise of protected rights.

B. Five-Sixths of The Judgment In This Case Represents Punitive Damages, And It Is This Portion Of The Judgment That Renders Petitioner Incapable Of Satisfying The Bond Requirement.

A further factor weighing in favor of granting the writ in this case, which distinguishes it from *Texaco*, is the amount of punitive damages involved in this case and the proportion of the judgment that they represent. Although punitive damages were included in *Texaco*, they were less than one-third of the entire judgment. Here, they constitute fully five-sixths of the judgment.

Additionally, the compensatory damages awarded against petitioner appear to have been assessed in a punitive amount. When a jury is allowed unbridled discretion in assessing punitive damages in astronomical amounts against an unpopular religious group, First

Amendment and due process rights are impinged. The encroachment is compounded when those punitive damages are included in the bond requirement. The bond requirement is for the protection of the judgment creditor. Punitive damages do not compensate plaintiffs for injury but are private fines levied by civil juries. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Punitive damages represent a windfall for the plaintiff, "to which they concededly have no right." *Rosener v. Sears Roebuck & Co.*, 168 Cal. Rptr. 237, 248 (Cal. App. 1980) (Elkington, J., concurring).

The power of juries in California to assess punitive damages is almost unrestricted.

Jury punitive damage awards of an unpredictable nature and appalling inconsistency continue to proliferate. Neither the Legislature nor the appellate courts have been able to formulate coherent reasonable guidelines and limitations for the remedy. Perhaps the quest is utopian and unrealizable.

In practice, it lacks any semblance of consistency between defendants, or even the same defendant in cases tried by different juries.

Because the Legislature has not prescribed guidelines for punitive damages they may be awarded at whim.

Woolstrum v. Mailloux, 190 Cal. Rptr. 729, 737 (Cal. App. 1983).

Included in the jury instructions on punitive damages given in the trial court in this case was this statement: "Now, the law provides no fixed standard as to the amount of such punitive damages. But leave the amount to the jury's sound discretion." (Tr. 14796).

Although punitive damages are penal in nature,³ the procedural safeguards of criminal proceedings are not afforded to the defendants. They are not protected by the Fifth Amendment right against self-incrimination or the beyond-a-reasonable-doubt standard of proof.

Due process rights can be violated by the vagueness of the standard used to impose punitive damages. This is especially true when liability is imposed for injuries allegedly caused by religious practices.

[W]here a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."

Grayned v. City of Rockford, 408 U.S. 104, 109 (1972), quoting, *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964), and *Cramp v. Board of Public Instruction*, 368 U.S. 278, 287 (1961).

As Justice Elkington stated in his concurring opinion in *Rosener*, "placing unrestricted power in a jury to direct punishment for 'evil intent' by compelling the 'evil doer' to pay money to another without right thereto, seems foreign to any concept of due process known to me." 168 Cal.Rptr. at 248. At the minimum, due process requires that petitioner have the opportunity to appeal such an award of punitive damages before they have the obviously intended effect of destroying an unpopular religious institution.

³ For a commentary on the penal aspects of punitive damages, see Grass, *The Penal Dimensions of Punitive Damages*, 12 Hastings Const. L.Q. 241 (1985).

II. THE JUDGMENT RENDERED IN THIS CASE BELOW IS PART OF A GROWING TREND OF PUNITIVE DAMAGE AWARDS AGAINST UNPOPULAR RELIGIONS WHICH NECESSITATES A PRONOUNCEMENT BY THIS COURT INSURING THAT SUCH AWARDS WILL BE REVIEWED BY APPELLATE COURTS.

In *Texaco*, the court of appeals emphasized "the unique and extraordinary circumstances of [that] case, which are unlikely ever to recur." 784 F.2d at 1150. One would hope that the judgment in this case was an equally unique incident of jury prejudice leading to enormous punitive damages against an unorthodox religious group. Sad to say, such is not the case. A short review of recent jury verdicts against religious groups based upon damages alleged to result from membership in such groups reveals a frightening trend: *George v. International Society for Krishna Consciousness*, No. 277565 (Cal. Super. Ct., Orange Co., June 17, 1983), *appeal docketed*, 4 Civ. No. G 0003999 (Cal. Ct. App.) (jury verdict of \$3.337 million compensatory damages and \$29.25 million punitive damages, remittitur accepted reduced compensatory damages to \$2.9 million and punitive damages to \$7.5 million); *Church Universal and Triumphant v. Mull*, No. C358191 (Cal. Super. Ct., Los Angeles Co., April 2, 1986) (jury verdict of \$500,000 compensatory damages and \$1 million punitive damages); *Christofferson v. Church of Scientology of Portland*, No. A77-04-05184 (Ore. Super. Ct. Sept. 5, 1979) (jury verdict for \$153,000 compensatory and \$1.9 million in punitive damages), *rev'd and remanded*, 644 P.2d 577 (Ore. App. 1982) (on remand, jury verdict for \$3 million compensatory and \$39 million punitive damages, May 17, 1985, judgment vacated by trial court and new trial granted).

This trend is further illustrated by the following cases which are just a few of the cases presently pending which

request punitive damages against churches: *Day v. Faith Baptist Schools*, No. C502019 (Cal. Super. Ct., Los Angeles Co.) (\$5 million in punitive damages are being sought in this suit prompted by the expulsion of students for violating religiously-based regulations governing drinking and dancing); *Lipin v. Roman Catholic Archbishop of Los Angeles*, No. C43998 (Cal. Super. Ct., Norwalk Co.) (\$1 million in punitive damages are sought in this case resulting from a traffic accident involving a rental car driven by an employee of the Catholic Church. The complaint alleges that the driver was advised to wilfully and maliciously assault and batter the plaintiff.); *Brown v. Fairview Church of Christ*, No. C427764 (Cal. Super. Ct., Orange Co.) (\$3 million including punitive damages are being sought in this case resulting from the disfellowshipping of a member for initiating a divorce contrary to the doctrine of the church.); *Kelly v. Christian Community Church*, No. C545117 (Cal. Super. Ct., Santa Clara Co.) (\$5 million including punitive damages are being sought in this case prompted by the excommunication of the plaintiff for conduct unbecoming of a member of the church.).

In light of this dangerous trend, it is imperative that this Court insure that religious groups are not denied the opportunity to appeal punitive damage awards by reason of bonding requirements that are dependent on such unpredictable awards, whereby the bonding requirement itself becomes punitive. Failure of the Court to protect strongly the rights of unorthodox religions in this respect will lead to juries being given a free hand to drive out of existence those groups with which they do not agree.

III. THE PUNITIVE DAMAGE AWARD, WHICH MAKES THE BOND REQUIREMENT PROHIBITIVE, IS ITSELF CONSTITUTIONALLY SUSPECT WHEN ASSESSED AGAINST A RELIGIOUS GROUP.

Recognizing that tort liability can burden First Amendment rights, this Court has sought to balance with these

rights the state's legitimate interest in compensating injured persons. In *Gertz v. Robert Welch, Inc.*, 418 U.S. at 349 (1974), the Court held that the "state interest extends no further than compensation for actual injury."

In limiting the power of courts to award punitive damages when First Amendment rights are burdened, the Court had this to say about punitive damages:

In most jurisdictions jury discretion over the amounts awarded is limited only by the gentle rule that they not be excessive. Consequently, juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused. And they remain free to use their discretion selectively to punish expressions of unpopular views. Like the doctrine of presumed damages, jury discretion to award punitive damages unnecessarily exacerbates the danger of media self-censorship, but, unlike the former rule, punitive damages are wholly irrelevant to the state interest that justifies a negligence standard for private defamation actions.

Id. at 350.

This Court has also recognized that punitive damages assessed against certain entities have the unacceptable effect of punishing parties other than the wrongdoers whose actions provoked the award. In barring the award of punitive damages against municipalities in § 1983 actions, this Court reasoned as follows:

[P]unitive damages imposed on a municipality are in effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of public services for the citizens footing the bill. Neither reason nor justice suggests that such retribution should be visited upon the shoulders of blameless or unknowing taxpayers.

Under ordinary principles of retribution, it is the wrongdoer himself who is made to suffer for his unlawful conduct. If a government official acts knowingly and maliciously to deprive others of their civil rights, he may become the appropriate object of the community's vindictive sentiments. A municipality, however, can have no malice independent of the malice of its officials. Damages awarded for *punitive* purposes, therefore, are not sensibly assessed against the government entity itself.

Newport v. Fact Concerts, Inc., 453 U.S. 247, 267 (1981) (citations omitted) (emphasis in original).

Similarly, the Court prohibited the assessment of punitive damages against the union in *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 50-51 (1979), for the following reasons:

Because juries are accorded broad discretion both as to the imposition and amount of punitive damages, the impact of these windfall recoveries is unpredictable and potentially substantial. Such awards could deplete the union treasuries, thereby impairing the effectiveness of unions as collective-bargaining agents. Inflicting this risk on employees, whose welfare depends upon the strength of their union, is simply too great a price for whatever deterrent effect punitive damages may have.

(citations and footnote omitted).

Amicus believes that punitive damages assessed against religious bodies have a similar effect of injuring innocent parties. It is the community of believers, dependent for their spiritual welfare on the institution of which they are members, that suffers the most when their church is driven to bankruptcy by excessive punitive damages, often awarded because of religious prejudice. It is their voluntary contributions, that were given to support

the religious activities of the church, that are now delivered to a plaintiff as a windfall. Since churches are supported by voluntary contributions, such awards can have a double effect. Besides depleting present assets, they will reduce future contributions. It can hardly be expected that members will continue old giving patterns if they think their donations may simply go to satisfy the punitive judgment.

Unlike the concerns motivating the Court in *Newport* and *Electrical Workers*, the concern for the interest of church members is of constitutional proportions. The very interests of these members that are affected by such awards are those that were given special protection by the Religion Clauses of the First Amendment.

Amicus intends to file a brief on the merits of this issue in the California Court of Appeal. It would be ironic and tragic if this issue were not presented to the higher courts because the very punitive damages to be challenged were assessed in such an excessive amount that the Petitioner was prevented from meeting the bond requirement necessary to make an appeal meaningful.

CONCLUSION

For the reasons discussed above, amicus curiae National Council of Churches of Christ in the U.S.A. urges this Court to grant petitioner's petition for writ of certiorari.

Dated: March 6, 1987

Respectfully submitted,

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